

THE EFFECTIVE DATE OF THIS ORDINANCE IS APRIL 5, 2006

ORDINANCE NO. 06-08-404

**RE: CHANGES TO APFO REGARDING ALTERNATE SCHOOL CAPACITY OPTION
FOR QUALIFYING PLANNED UNIT DEVELOPMENTS (PUDS)**

Under the authority granted in §1-20-23 of the Frederick County Code, the Board of County Commissioners (BOCC) desires to revise the Adequate Public Facilities Ordinance (Chapter 1-20 of the Frederick County Code) to provide an alternative method for meeting school adequacy requirements for qualifying planned unit developments (PUDs).

On May 24, 2005, Land Stewards, L.C. filed an APFO text amendment (AT-05-03) with the County Office of Planning and Zoning. A public hearing on the proposed text amendment was held by the Frederick County Planning Commission on October 19, 2005. At the public hearing, the Planning Commission recommended denial of the text amendment. The Board of County Commissioners of Frederick County (BOCC) held a public hearing on January 17, 2006 and denied approval of AT-05-03.

On January 23, 2006, Land Stewards filed a revised text amendment which was designated as AT-06-01. On February 15, 2006, the Planning Commission held a public hearing. At the public hearing the Frederick County Board of Education (BOE) recommended certain changes to AT-06-01. The Planning Commission passed a motion to adopt the text amendment with the inclusion of the BOE comments.

The Board of County Commissioners held a duly advertised public hearing on April 4, 2006, during which the public had an opportunity to comment on this proposed Ordinance.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS FOR FREDERICK COUNTY, MARYLAND, that:

- I. A new Section 1-20-13 is added as follows:

1-20-13. ALTERNATE SCHOOL CAPACITY OPTION FOR QUALIFYING PUDS.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, ANY PUD WHICH: (1) HAS A VALID PHASE I APPROVAL FOR MORE THAN 3,000 UNITS; (2) HAD A VALID PHASE II PUD PLAN APPROVAL AS OF DECEMBER 1, 1991; AND (3) IS NOT COMPLETELY BUILT OUT AS OF THE DATE OF ADOPTION OF THIS SECTION (A "QUALIFYING PUD"), MAY MEET THE REQUIREMENTS FOR ADEQUATE SCHOOL CAPACITY UNDER THIS SECTION, IN LIEU OF MEETING THE SCHOOL ADEQUACY REQUIREMENTS OF §1-20-61 OF THIS CHAPTER.

- (A) FOR PURPOSES OF THIS SECTION ONLY, "ADEQUATE SCHOOL CAPACITY" SHALL MEAN THE FUNDING OR PROVISION OF SCHOOL CAPACITY IN AMOUNTS TO BE DETERMINED BY THE BOARD OF EDUCATION, AND APPROVED BY THE PLANNING COMMISSION, FOR EACH SCHOOL SERVING THE QUALIFYING PUD AFTER CONSIDERATION OF CURRENT ENROLLMENTS AND CAPACITIES OF EACH SCHOOL SERVING THE QUALIFYING PUD, STUDENTS GENERATED BY THE QUALIFYING PUD, POTENTIAL ENROLLMENT GROWTH FROM OTHER RESIDENTIAL DEVELOPMENT, AND OTHER FACTORS AS DETERMINED BY THE BOARD OF EDUCATION THAT MAY IMPACT SCHOOL ENROLLMENT.
- (B) THE OWNER OR DEVELOPER OF A QUALIFYING PUD MAY, AFTER CONSULTATION WITH THE BOARD OF EDUCATION, PROPOSE AN OPTION TO PROVIDE ADEQUATE SCHOOL CAPACITY ("DEVELOPER OPTION PROPOSAL") FOR APPROVAL BY THE PLANNING COMMISSION. THE DEVELOPER OPTION PROPOSAL SHALL BE ACCOMPANIED BY A WRITTEN AGREEMENT BETWEEN THE OWNER OR DEVELOPER OF THE QUALIFYING PUD AND THE BOARD OF EDUCATION WHICH INCLUDES THE NUMBER AND SCOPE OF SCHOOL CONSTRUCTION PROJECTS APPROVED BY THE BOARD OF EDUCATION, AND THE SCHEDULE, PROCESS, AND OTHER TERMS AND CONDITIONS ASSOCIATED WITH DEVELOPER FUNDED SCHOOL CONSTRUCTION PROJECTS.
- (C) THE PLANNING COMMISSION MAY APPROVE A DEVELOPER OPTION PROPOSAL THAT MEETS THE REQUIREMENTS OF THIS SECTION FOLLOWING RECEIPT

OF COMMENTS, DATA, AND INFORMATION FROM THE BOARD OF EDUCATION, COUNTY STAFF AND THE PUBLIC.

- (D) THE DEVELOPER OPTION PROPOSAL APPROVED UNDER THIS SECTION SHALL BE MEMORIALIZED IN A DEVELOPER OPTION AGREEMENT BETWEEN THE OWNER OR DEVELOPER OF THE QUALIFYING PUD AND THE PLANNING COMMISSION THAT SETS FORTH THE PUBLIC SCHOOL IMPROVEMENTS TO BE PROVIDED, THE TIMING OF FUNDING OR CONSTRUCTION OF SUCH IMPROVEMENTS, AND A PHASING PLAN LINKING THE RATE AND DENSITY OF CONSTRUCTION WITHIN THE QUALIFYING PUD TO THE AVAILABILITY OF THE SCHOOL FACILITIES. THIS DEVELOPER OPTION AGREEMENT SHALL BE INCORPORATED INTO THE ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING BETWEEN THE DEVELOPER AND THE PLANNING COMMISSION COVERING ALL PUBLIC FACILITIES UNDER THIS CHAPTER. ANY SUBSEQUENT MODIFICATIONS TO THE LETTER OF UNDERSTANDING THAT MAY IMPACT PUBLIC SCHOOLS WILL REQUIRE REVIEW AND APPROVAL BY THE BOARD OF EDUCATION.
- (E) THE PHASING PLAN FOR CONSTRUCTION OF A QUALIFYING PUD AND THE APFO APPROVAL MAY BE GRANTED FOR A TIME PERIOD UP TO, BUT NOT EXCEEDING 15 YEARS, AND AS OTHERWISE PROVIDED UNDER §1-20-8.

II. Section 1-20-9 is amended as follows:

1-20-9. APPROVAL OF MIXED USE DEVELOPMENTS (MXDs) AND PLANNED UNIT DEVELOPMENTS (PUDs).

- (B) All PUD's with existing Phase II approval as of December 1, 1991, shall meet the requirements of this chapter prior to preliminary plat (Phase III) approval or reapproval. A phasing plan indicating the density and rate of development in accordance with the availability of adequate public facilities shall also be approved as part of the preliminary plat or site plan approval.
- (C) MXD or PUD Phase II , preliminary plans or site plans that do not meet the requirements for adequate public facilities in articles III — VI herein, shall not be approved except as a conditional approval as allowed for in section 1-20-10 (A) OR (B). Final plat approval may be granted and lots recorded as the conditions set forth in the conditional approval are met.

- (D) Prior to the signing of the Phase II, or preliminary plat, an adequate public facilities letter of understanding shall be forwarded by the planning commission to the developer.

III. Section 1-20-10 is amended as follows:

1-20-10. CONDITIONAL APPROVAL.

- (A) Conditional site plan, or preliminary plat, approval may be granted to a development that does not have adequate public facilities at the time of planning commission consideration provided that the developer offers to provide the necessary improvements to make the facility adequate as allowed for in section 1-20-11, developer option, OR IN SECTION 1-20-13, ALTERNATE SCHOOL CAPACITY OPTION FOR QUALIFYING PUDS. If developer improvements will not result in adequate capacity, conditional approval shall not be granted, and preliminary plat, and site plan approval shall be denied.

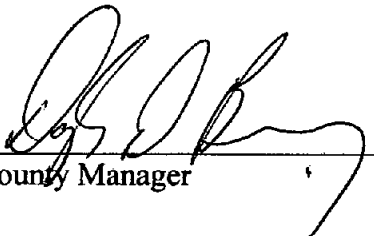
AND BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall take effect on April 5, 2006

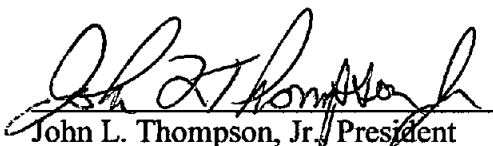
AND BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall expire and be of no further force and effect on July 1, 2007, provided that APFO school adequacy approvals granted under this Ordinance shall remain in full force and effect during the APFO approval period granted by the Planning Commission.

The undersigned hereby certifies that this Ordinance was approved and adopted on the 4th day of April, 2006.

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF
FREDERICK COUNTY, MARYLAND


County Manager

BY:  (SEAL)
John L. Thompson, Jr. President

KLM
4/5/06